

KEVIN P. MILLER,)
)
Petitioner,)
)
v.) No. 4:15-CV-914-CDP
)
)
U.S. BANKRUPTCY COURT,)
)
EIGHTH CIRCUIT, EASTERN)
DISTRICT, CASE NO. 15-43390-659,)
)
Respondent.)

This matter is before the Court on petitioner Kevin P. Miller's pro se application for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. For the following reasons, the Court will deny and dismiss the petition for lack of subject matter jurisdiction.

Petitioner brings this § 2241 habeas action to appeal a May 5, 2015 order of the United States Bankruptcy Court, denying petitioner's motion for leave to proceed in forma pauperis and dismissing his Chapter 11 case. Petitioner is not incarcerated, and he is not challenging the validity of a state or federal sentence or conviction.

Discussion

Title 28 U.S.C. § 2241 provides in pertinent part:

(c) The writ of habeas corpus shall not extend to a prisoner unless –

(1) He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or

(2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or

(3) He is in custody in violation of the Constitution or laws or treaties of the United States; or

(4) He, being a citizen of a foreign state and domiciled therein is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, order or sanction of any foreign state, or under color thereof, the validity and effect of which depend upon the law of nations; or

(5) It is necessary to bring him into court to testify or for trial.

Petitioner does not meet the "in custody" requirement of § 2241; he currently is not in custody serving a state or federal sentence. As such, the Court lacks § 2241 habeas corpus jurisdiction to entertain petitioner's instant challenge to Bankruptcy Court's recent dismissal of his Chapter 11 action. For these reasons, petitioner's

application for writ of habeas corpus pursuant to 28 U.S.C. § 2241 will be denied and dismissed, without prejudice.

Accordingly,

IT IS HEREBY ORDERED that petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 is **DENIED**, without prejudice, for lack of subject matter jurisdiction.

A separate Order of Dismissal shall accompany this Memorandum and Order.

Dated this 18th day of June, 2015.


UNITED STATES DISTRICT JUDGE